FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 741

W. B. HERRON,
Appellant,

v.

THE UNITED STATES OF AMERICA,
Appellee.

JURISDICTIONAL STATEMENT

On Appeal from the United States District Court for the District of Oregon

Appearing herein
In propria persona:
W. B. HERRON,
c/o Western Oil Co.,
10443 N. E. Klickitat,
Portland 20, Oregon,
Appellant.

E. LUCKEY,
United States Attorney,
District of Oregon,
506 U. S. Courthouse, Box 71,
Portland 7, Oregon,
Attorney for Appellee.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

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of the United States

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No. _____

W. B. HERRON,

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v.

THE UNITED STATES OF AMERICA,

Appellee.

JURISDICTIONAL STATEMENT

On Appeal from the United States District Court for the District of Oregon

Appellant Appeals from the Dismissal Order of the United States District Court for the District of Oregon in the above Case, there identified as NO. 60-292, entered on October 14, 1960 and submits this Statement to show that this Court has Jurisdiction of the Appeal and that a substantial Constitutional Question is presented.

OPINION BELOW

The Opinion and Order of the United States District Court for the District of Oregon is not reported. Copies of the Opinion and Order of that Court below are attached hereto as Appendix A.

JURISDICTION

The Order issued by Honorable Chas A. Clark, specially assigned to hear the Jury Case in the United States District Court for the District of Oregon was entered October 14, 1960. Notice of Appeal was filed in the United States District Court for the District of Oregon November 12, 1960, and the time within which the Plaintiff-Appellant must Docket the within Case and record with the Clerk of the Supreme Court of the United States was enlarged to and including the 6th day of March, 1961. There being two extensions of time granted by the Honorable Chas A. Clark, Chief Judge of the United States District Court, Idaho District.

This Case NO. 60-292 filed July [redacted], 1960, is a suit to declare and show that a justifiable cause does exist for this action being filed against the Government. That the matters involved therein are strictly Constitutional concerning serious breaches, wilful violations of the Federal Bill of Rights; thus becomes admissible under those rules of the Supreme Court regulating such Docket Entries. The complete Transcribed Record of the entire proceedings of this Case including the contentions of counsel for the Government and the appellant, acting as his own attorney in propria persona is contained in this printed record under Appendix A. The jurisdiction of this Court is invoked under the securities, grants, liberties and guarantees as specifically set forth in the Federal Bill of Rights and are enumerated herein.

QUESTIONS PRESENTED

Can the United States District Court for the District of Oregon, the people's Federal Court of first instance, in this Case No. 60-292 concerning matters and issues contrary to the Constitution and Laws of the United States; deny appellant his day in Court before an empaneled jury to petition the Government for a redress of his grievances, which were not instituted and filed before the lower Court under or based upon the provisions or regulations of the Tort or Tucker Acts; but solely upon the willful infractions and violations of the Bill of Rights which the Government itself committed, notwithstanding at its beginning had specifically declared; "the right of trial by jury shall be preserved"?

Appellant is not presenting any question herein relative to whether he shall or shall not receive any commensurate damages; merely the question may he have his constitutional right by having his day in Court,—"to petition the Government for a redress of grievances"?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are as follows:

(A)—U. S. Constitution, Article I—The Bill of Rights.

(B)—U. S. Constitution, Article IV—The Bill of Rights.

(C)—U. S. Constitution, Article V—The Bill of Rights.

(D)—U. S. Constitution, Article VI—The Bill of Rights.

(E)—U. S. Constitution, Article VII—The Bill of Rights.

(F)—U. S. Constitution, Article VIII—The Bill of Rights.

(G)—U. S. Constitution, Article IX—The Bill of Rights.

(H)—U. S. Constitution, Article X—The Bill of Rights.

The above constitutional provisions are printed in Appendix B.

STATEMENT

That the matters involved in appellant's Case are strictly constitutional violations is most apparent. They concern a number of serious breaches of the Federal Bill of Rights; furthermore and of major premise, is the categorical imperative denying appellant the constitutional privilege of being granted a trial that the matters and issues of his grievances be adjudicated by a jury. All the plaintiff-appellant ever received was an "eleven minute" session at a Hearing on a Motion to Quash the Service of His Complaint and forthwith Dismiss the Case.

The Complaint filed in this Case shows plaintiff-appellant requested a jury trial. Notwithstanding that, the Court below elected to deny appellant his constitutional right to have a trial before a jury Court; and further decide the Case forthwith, without any trial

whatsoever; at the time Court heard the Motion to Quash Service of Plaintiff's Complaint. The transcribed record of the hearing proceedings recorded herein—Appendix A—shows, to wit: That Mr. Harr, Deputy U. S. Attorney, asked the Court if he had read the Complaint; the Court replied, "Yes, I have. I have read it very carefully and studied the matter considerably before appearing here on the bench." Thereby it is well established the Court acknowledged plaintiff had requested a jury trial.

Furthermore it is well established that: the Court being fully advised in the premise, notwithstanding, proceeded to try the Case and dismiss it at once, all consummated in a time period of exactly "eleven minutes". The Court's quote "I feel there is no reason to grant any extension of time in this Case, and I will proceed to decide it."

Moreover, to well denote the Court was much in doubt about the constitutionality of denying plaintiff-appellant's rights to his day in Court before an empaneled jury; is well reflected and noted by the Court's own preliminary statement as shown in the printed record of Appendix A; eighth paragraph from the last, to wit: "although the Court is putting itself in a questionable position in not sustaining the Motion without comment, I will comment to this extent: * * * "

By reason of the foregoing matters relative to the Dismissal Order of the Court below, and the subsequent filing of appellant's appeal to the Honorable Supreme Court of the United States via this means of applica-

tion, herein respectfully requests that his Jurisdictional Statement be docketed that a justifiable opportunity will thus be forthcoming therefrom to obtain the constitutional privilege therein provided to settle matters concerning a federal grievance.

Therefore appellant prays that an Order be issued by the Honorable Supreme Court reinstating appellant's Complaint No. 60-292 in the same Court below, and with the same specially assigned Honorable Chief Judge or his associate to said Case being satisfactory; as providence advises appellant the buds of truth concerning Cases Nos. 60-292 and 7975, its parent Case, have fully blossomed by now.

Dated this 3rd day of March, 1961, at Portland, Oregon.

W. B. HERRON
Appellant in propria persona.

CERTIFICATE OF SERVICE

The undersigned, W. B. Herron, the plaintiff-appellant herein acting as his own attorney appearing in propria persona does hereby certify: that in compliance with paragraph I of Rule 33 of Revised Rules of the Supreme Court of the United States, two copies of the foregoing Jurisdictional Statement were placed in a sealed envelope properly addressed to C. E. Luckey, United States District Attorney for the District of Oregon, 506 U. S. Courthouse, Box 71, Portland 7, Oregon, and was forwarded via certified mail, return receipt requested and deposited in the mail depository at the Main Branch Portland, Oregon, Post Office at Broadway and S. W. Glisan Street on this date.

That inasmuch as appellant is not represented by counsel a member of the bar of the Supreme Court of the United States, he therefore will furnish proof of such service having been made by forwarding to the Clerk of the Supreme Court of the United States, the certified mail receipt together with its return receipt card immediately upon receipt of same from the recipient.

Dated this 3rd day of March, 1961, at Portland, Oregon.

W. B. HERRON
Appellant in propria persona.

W. B. Herron
c/o Western Oil Co.
10443 N.E. Klickitat
Portland 20, Oregon.

APPENDIX A

The complete Certified Transcribed Record of the entire Proceedings of this Case held by the Court below reads as follows:—

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

W. B. Herron,)
Plaintiff.)
vs.) Civil No. 60-292
) TRANSCRIPT
United States of America,)
Defendant.)

This matter came on for hearing before the Honorable Chas A. Clark, Chief Judge of the United States District Court, District of Idaho, sitting by special assignment in the District of Oregon, at Portland, Oregon on October 14, 1960 at 2 o'clock P.M.

APPEARANCES

W. S. Herron, Esq., Portland Oregon
Appearing in person.

C. E. Luckey, United States District Attorney for the District of Oregon, Portland, Oregon

Victor E. Harr, Assistant United State District Attorney for the District of Oregon, Portland, Oregon
Attorneys for the Defendant.

G. C. Vaughan
Reporter

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OCTOBER 14, 1960
2 o'clock P.M.

THE COURT: Are you gentlemen ready?

MR. HARR: The Defendant is ready.

MR. HERRON: The Plaintiff is ready.

THE COURT: You may Proceed Mr. District Attorney.

MR. HARR: If the Court please, this matter is before the Court on Defendant's motion to quash service and dismiss the cause. With the motion the Government has filed a short memorandum of authorities.

Might I inquire whether the Court has read the complaint?

THE COURT: Yes, I have. I have read it very carefully and studied the matter considerably before appearing here on the Bench.

MR. HARR: Well, I really don't have anything to add to what I set forth in the memorandum of authorities. I feel that the one case that I cited in the second paragraph, that of Cromelin v. United States is, no doubt, controlling. I didn't say there that certiorari was denied in that case and therefore it would appear that would be the final disposition of this particular litigation. So, if the Court has ready my memorandum I will rest on that.

THE COURT: Do you have anything to say Mr. Herron?

MR. HERRON: I don't know whether I gave the wrong impression in my complaint or not, I didn't

mean to, if I did. I did use the word tort a time or two, meaning, in that sense that it is a tort by reason of the fact that it is not of a contracting nature. If is a constitutional matter, violation of the constitution, and under the heading, shall we say, of it being a guaranty of a civilian's right to be free from arbitrary arrest and arrest without any due process of law. So, I don't challenge at all counsel for the Government's contentions. I didn't, in fact, have a chance to study them because the time was so short, and I have other matters,—I have a case in the Supreme Court of the United States and I am working on the service right now and I haven't had a chance to check on them but I am perfectly willing to take his word that they are authentic and proper. I believe that they are, but my action is not based upon the Tort Act nor the Tucker Act. It's in violation of the Constitutional rights as set forth in the Constitution of the United States through the Bill of Rights, particularly the fifth and the fourteenth Amendments. However, I think there are other amendments that are applicable and I think I will be able to show that when the transcript ~~or excerpts~~ of the transcript are made available in that case, 7975, the Insurance Claim case, which this is the outgrowth of. So my contentions are that I stand upon that ground, being, what I am sure I can prove, Your Honor, an overt act of the Court in arbitrary arrest. Just for one instance, the time that I was arbitrarily removed from the Court room by the United States Marshal the Judge of the Court made the smart retort: "Herron got just what he was looking for", and that brought a hilarious reply from my oppos-

ing counsel. That's just one instance. I only cite that, not that I like to and to incorporate it in the records of the Court, but it is mandatory upon me to show that a vicious violation of my constitutional rights has taken place, and I think I have a recourse and a very legitimate and proper one by that reason, because it is founded upon the basic principles of our God blessed Constitution of the United States of America which I claim to have in other pleadings in the other case. It is absolutely founded on God inspired men from the ten commandments of the Holy Writ, and the only Government that has a constitution of that type and these guarantees in the Bill of Rights were not just promiscuously put there as a matter of form to be followed or to be guided by, they are a guaranty that those things would not happen, but they definitely did, which I am sure I can show. So for that reason I think I should have my right, title and interest of having my day in Court.

I don't know, Your Honor, whether Counsel for the Government received the motion this morning or not. I filed a motion this morning for,—you see the time was so short,—I was late in getting service, through no fault of mine or counsel for the Government, because I assume that he sent the service by way of certified mail—

THE COURT: —I have the motion here.

MR. HERRON: I appreciate that then. I thought I would just draft a quick motion so that you will know a little something and have something of the record before you in as much as you are not one of the judges of this particular District, and so you would have something to show my contentions.

THE COURT. I have given this matter a great deal of study. I will take a short recess of the Court and make my rulings as soon as I can marshal together a few notes that I have made. It will not take very long and I will also rule on this motion at that time. We will take a ten minute recess.

October 14, 1960 2:45 P.M.

THE COURT: I feel there is no reason to grant any extension of time in this case, and I will proceed to decide it.

This is before the Court on a Motion To Quash Service and Dismiss, filed against the complaint in this action. Right at the threshold the Court must determine whether or not the complaint states a claim that will withstand this motion. The complaint is so ridiculous that it appears to have been drawn by a person very badly confused and it is quite questionable whether the Court should even discuss it. The entire complaint only makes one charge. As stated in the complaint it stems from and is the outgrowth of deliberate overt rife acts of vicious and rampant violations of the plaintiff's constitutional rights as appears in the Federal Bill of Rights, such acts being committed by the Federal Judge named, and his two aiding and abetting collaborators and conspirators, naming them, which constitutes the full impaneled body of judges of the United States District Court of the District of Oregon. The complaint then alleges that the "violation as herein referred to occurred in case number 7975, a fire insurance claim case filed February 25, 1955, in said Federal District

Court." nowhere is it alleged that the overt act is claimed to be.

It appears from the complaint that this case is now on appeal. It is well established that when a person is aggrieved by the acts or decisions of a lower Court an adequate remedy is provided by appeal to a higher court. Under our system of jurisprudence every safeguard is provided for a fair determination of this issue and the Courts are open for such determinations, since from the commencement of the proceedings a record is made, and at the conclusion of the trial in the district court any one who is not satisfied can have every act of the District Judge reviewed, not only by the Circuit Court of Appeals, but can ask to have their decision reviewed by the Supreme Court of the United States. It appears from the complaint on file herein that the plaintiff is following that procedure.

Although the Court is putting itself in a questionable position in not sustaining the motion without comment, I will comment to this extent:

First, to say that the United States cannot be sued except where they have specifically given their consent to be sued, and it is clear that no such consent has been given in a case of this kind.

Second, The judges here are not in any way under the control of the United States. They are independent from any control whatsoever, and their independence is carefully guarded by the Constitution and Laws of the United States.

Third, no jurisdiction is conferred upon Federal District Courts to hear any claim against a Federal Judge or the Government for any act of a Federal Judge while acting in the scope of his office.

In this country of ours we give everyone the right to come into court and state their claim, and the Clerk has no right to withhold the filing of the complaint and we have no desire to deny that right, but here is a case where the plaintiff has used the Court to file an abusive and false tirade against these distinguished judges of this court. There should be, and it may be that he could be penalized for doing it. That is a matter that I will give further consideration to, and if the Court determines that any action can be taken I will request the District Attorney to act.

It may be possible, and I think probable, that the plaintiff is ill and disturbed in mind. If that is the case I am sorry, and I will approach any further action as to advice to the District Attorney to proceed against him with this in mind.

There should be some way that the Court could order this vicious paper, filed under the guise of a complaint, expunged from the records of this Court, but all that this Court can do is to say that it is an abusive tirade without foundation, and announce my decision, and that decision is that the motion will be sustained in its entirety and the action dismissed, and it is so ordered.

Court will be in recess.

State of Idaho)
) ss.
County of Ada.)

I, G. C. Vaughan, hereby certify that I am one of the official Court Reporters for the United States District Court for the District of Idaho, and that I am the one who took the proceedings had in and about the hearing of the above entitled cause in shorthand and thereafter transcribed the same into longhand (typing) and

I further certify that the foregoing transcript consisting of pages numbered to 10 is a true and correct transcript of the proceedings had in said matter on October 14, 1960.

In Witness whereof, I have hereunto set my hand this 17th day of November 1960.

G. C. Vaughan
Reporter.

APPENDIX B

The applicable provisions of the United States Constitution are:

(A)—U. S. Constitution, Article I—The Bill of Rights; * * * the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

(B)—U. S. Constitution, Article IV—The Bill of Rights; the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(C)—U. S. Constitution, Article V—The Bill of Rights; no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, * ** nor be deprived of life, liberty or property, without due process of law; * * *

(D)—U. S. Constitution, Article VI—The Bill of Rights; in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be con-

fronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

(E)—U. S. Constitution, Article VII—The Bill of Rights; in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, * * *

(F)—U. S. Constitution, Article VIII—The Bill of Rights; excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

(G)—U. S. Constitution, Article IX—The Bill of Rights; the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(H)—U. S. Constitution, Article X—The Bill of Rights; the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

FILE COPY

FILED
APR 10 1961
JAMES R. BROWNING, Clerk

No. 791

In the Supreme Court of the United States

OCTOBER TERM, 1960

W. B. HERRON, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

MOTION TO DISMISS

ARCHIBALD COX,
Solicitor General,
WILLIAM H. ORRICK, JR.,
Assistant Attorney General,
ALAN S. ROSENTHAL,
ROBERT E. POWELL,
Attorneys,
Department of Justice,
Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 791

W. B. HERRON, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

MOTION TO DISMISS

Pursuant to Rule 16 of the Revised Rules of this Court, the United States moves that the appeal from the judgment of the United States District Court for the District of Oregon be dismissed.

OPINION BELOW

The Opinion and Order of the district court (J.S. 13-16)[1] is not reported.

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[1] "J.S." refers to the Jurisdictional Statement of appellant.

JURISDICTION

The judgment of the single judge district court was entered on October 14, 1960. Notice of appeal to this Court was filed on November 12, 1960. The time within which to docket the appeal was enlarged by the district court to and including March 6, 1961. Appellant seeks to invoke the jurisdiction of this Court under "* * * the securities, grants, liberties and guarantees as specifically set forth in the Federal Bill of Rights * * *."

QUESTION PRESENTED

Whether, in an action to recover damages from the United States for the alleged wrongful acts of three district judges performed within the scope of their judicial offices, this Court has jurisdiction to entertain an appeal from a judgment of a single judge district court which dismissed the complaint on the grounds (1) that the United States had not consented to be sued; (2) that federal judges are not subject to the control of the Executive; and (3) that no jurisdiction is conferred upon a district court to hear claims based upon an act of a federal judge performed within the scope of his office.

STATEMENT

This is an action brought by appellant against the United States based upon the alleged wrongful acts of United States District Judges William G. East, Gus J. Solomon and John F. Kilkenny, performed within the scope of their judicial offices (R. 1-8).

The claims grow out of the proceedings in another case in the District Court for the District of Oregon, *Herron* v. *Millers National Insurance Co.*, Civil No. 7995, in which, on July 25, 1958, Judge East found appellant in contempt of court after appellant repeatedly refused to comply with orders of the court to take the witness stand (R. 4). Appellant was sentenced to ten days imprisonment for the contempt and was taken into custody by the United States Marshal (R. 4-5). Thereafter, appellant sought a writ of prohibition and mandamus from the Court of Appeals for the Ninth Circuit, which was denied. The order of that court is not reported. Appellant filed a petition for a writ of certiorari in this Court seeking review of the order of the Court of Appeals. The petition was denied. *Herron* v. *United States District Court for the District of Oregon*, 364 U.S. 891.

On July 22, 1960, appellant filed the complaint in the present case alleging that, by reason of the treatment accorded him by Judge East and by the United States Marshal, he had been deprived of his rights under the Fourth through Tenth Amendments to the Constitution, especially the Fifth, and the Fourteenth Amendment (R. 1-9). On September 19, 1960, the Government filed a motion to quash service and to dismiss on the grounds that the complaint failed to state a cause of action against the United States, and that the complaint sought relief sounding in tort on a claim expressly excepted from the scope of the Federal Tort Claims Act, 28 U.S.C. 2680(h) (R. 12). On October 14, 1960, Chief Judge Chase A. Clark of

the District Court for the District of Idaho, sitting by special assignment, dismissed appellant's complaint (J.S. 15). The court held: (1) that the United States had not consented to suit on claims of this character; (2) that federal judges are not subject to the control of the Executive; and (3) that no jurisdiction is conferred upon district courts to hear claims arising out of acts performed by federal judges in the scope of their judicial office (J.S. 14-15).

ARGUMENT

The appeal should be dismissed. This Court's appellate jurisdiction over decisions of single judge district courts in civil suits is limited to instances where, unlike the situation here, an Act of Congress has been held unconstitutional, 28 U.S.C. 1252.

CONCLUSION

For the foregoing reason, we respectfully submit that this appeal should be dismissed.

ARCHIBALD COX,
Solicitor General.

WILLIAM H. ORRICK, JR.,
Assistant Attorney General.

ALAN S. ROSENTHAL,
ROBERT E. POWELL,
Attorneys.

MARCH 1961.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1961 590022 1138

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FILED
MAY 12 1961
JAMES R. BROWNING, Clerk

In the Supreme Court
of the United States

OCTOBER TERM, 1960

No. [illegible]

W. B. HERRON,
Appellant,

v.

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Appellee.

BRIEF OPPOSING MOTION TO DISMISS

On Appeal from the United States District Court for the District of Oregon

Appearing herein
In propria persona:
W. B. HERRON,
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1043 N. E. Klickitat,
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WILLIAM H. ORRICK, JR.,
Assistant Attorney General,
ALAN S. ROSENTHAL,
ROBERT E. POWELL,
Attorneys,
Department of Justice,
Washington 25, D. C.
For Appellee.

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In the Supreme Court
of the United States

OCTOBER TERM, 1960

No. 791

W. B. HERRON,

Appellant,

v.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF OPPOSING MOTION TO DISMISS

On Appeal from the United States District Court for the District of Oregon

OPPOSING STATEMENT

The appellant pursuant to Rules 16-(3), 33, 39 and 40 of this Court, answers to the appellee's move seeking to have this case dismissed.

Appellant succinctly reiterates with amplifications, that the United States District Court for the District of Oregon grossly erred in denying appellant's guaranteed State and Federal Constitutional rights and privileges to a jury trial; wherein to present grievances for a full

adjudication of Cass No. 60-292. Therefore, good causes are shown that this appeal be sustained, the disparagement be remedied, the appellant have his day in court.

OPINION BELOW

The Opinion and Order of the United States District Court for the Oregon District is not reported. The complete certified transcribed record of the only hearing proceedings held in this case by the Court below, was before the Honorable Chase A. Clark, Chief Judge of the United States District Court for the District of Idaho sitting by special assignment at the instance of the United States Court of Appeals for the Ninth Circuit, at Portland, Oregon, on October 14, 1960; and is fully set forth in appellant's Jurisdictional Statement (J. S. 9-16)[1]

JURISDICTION

The Opinion and Order of Honorable Chas A. Clark was rendered and filed on October 14, 1960; Notice of Appeal filed November 12, 1960; time within which plaintiff-appellant was to docket his Jurisdictional Statement was twice enlarged to and including March 6, 1961, by the same Judge who heard this case and issued the Order of Disimssal—Honorable Chase A. Clark. Appellant's Jurisdictional Statement was docketed by the clerk of this Court March 4, 1961 as No. 791, October Term, 1960. This case No. 60-292 was filed in the

[1] "J. S." refers to appellant's Jurisdictional Statement.

United States District Court for the District of Oregon on July 22, 1960. The dates of the incidents of gross misconduct; wilful abuse of judicial powers; arbitrary arrest without any due and proper processes of law occurring within the courtroom of Judge William G. East, and which was committed and ordered by said Judge,—before,—plaintiff W. B. Herron had completed presentation of his case to the empaneled jury, was on July 23, 24, 25, 1958.

The jurisdiction of this Court is invoked by reason that said acts and matters involved concern serious breach wilful violations of appellant's constitutional rights as specifically expressed and guaranteed in the Federal Bill of Rights relative to those securities, rights, liberties and grants therein provided (J. S. 17-18).

CONSTITUTIONAL PROVISIONS INVOLVED

Appellant cites this case involves the constitutional provisions which are all enumerated in the Jurisdictional Statement (J. S. 17-18). And therein are all sufficient citations which gives guarantees to all citizens, including appellant, that the Government of the United States—particularly the Judicial Branch—shall sustain all such rights, that they shall not be disparged.

Article *III* of the Constitution established the Supreme Court and conferred exercising powers on Congress with regard to the Judiciary and its operations; the First Congress laid the foundations for the Federal Courts and Federal Jurisdiction in the Judiciary Act of

1789; arrangements of said Act have undergone changes since 1789; but not in any material respects as to the Supreme Court of the United States, the only Federal Court mentioned in the Constitution and which was designated as having the ultimate judicial authority of the United States. Thus it becomes well established and most evident the present day Judiciary as it operates and concerns the United States Circuit and District Courts, that all branches of the United States Government; Executive, Legislative and Judicial, are all involved in some form of concern and/or liability when a Federal District Judge will wilfully and arbitrarily violate a citizen's grants and rights to moneys and property all of which were solely decreed to him by a state court, then further deny his rights to a day in court to present such grievances before his peersmen at a jury trial; all of such foregoing acts were wilfully committed by the United States Government against the appellant. Committed by that very branch of said Government which was specially assigned and delegated to insure, protect and serve as the guardian of justice to all citizens including the appellant; but now has shown and proven itself to be the culprit.

Said Thomas Jefferson in 1821:—

> "It has long been my opinion, and I have never shrunk from its expression . . . that the germ of dissolution of our Federal Government is in the constitution of the Federal Judiciary; an irresponsible body—for impeachment is scarcely a scarecrow—working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the

> States, and the Government of all be consolidated into one. To this I am opposed; because, when government, domestic and foreign, in little as great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government or another, and will become as venal and oppressive as the government from which we separated."

Such inroads of judicial aggressiveness could appropriately be termed and is tantamount to an insurgent's march boldly paced upon the freedom paths of the State of Oregon grandiosely displaying the rent flag of Oregon State authority.

QUESTIONS PRESENTED

Appellant answer appellee's citations under the caption, question presented, to-wit: (1) "that the United States had not consented to be sued,"--appellant answers: astoundingly preposterous it is for counsels of the Government to suggest such when this case involves wilful violations of Constitution Law. The Government just does not have any defense for such deliberate judicial misconduct, for there is none whatsoever. If there was, counsels would be forthcoming with an abundance of citations; being none the only feeble answer is in the nature of a move to dismiss; preponderantly equivalent to a self admission there is no defense to present; so therefore invoke artificial reason and law seeking a speedy summary form of disposition. By-passing the natural law ordained by God; as Magna Carta and our Federal Constitution stands today for rights that are

divine in their nature. Our Government is of the people; founded by the people of the thirteen original states; the states being the genesis of our Federal Constitution; Constitutional Law thereby is a mandatory law with mandatory power exercised by the authority of the Supreme Court given to it by the Constitution; all other court's power and duties are of Legislative authority, not Constitutional. Therefore when any citizen's Constitutional rights have been wilfully violated, breached or disparged, as appellant's has, he needs no consent from Congress to petition for a jury trial wherein to present his grievances. If it were needed, the founding fathers of our Government would of inserted such in the Articles of the Federal Constitution being God inspired men that they were; not yielding to the ever constant urge today, to indulge in unnatural artificial reasoning; devoid of spiritual receptiveness. The Tucker and Tort Acts have no significance or relationship whatsoever to any of the matters, issues, facts, circumstances and things involved in this case.

(2) "That Federal Judges are not subject to the control of the Executive;" appellant answers: The Federal District Judges are appointed by the Executive Branch of the Government, the President, approved by the Senate, thus Legislative; and when they take the oath of allegiance to the United States Government they do so in a dual respect, in both responsible capacities as citizens in employment and civil officers swearing allegiance as such citizens and officers; are thereby subject to both impeachment and prosecution for their crimes and/or misdemeanors (Article *II*, Section 4 of the Federal Constitution).

In case No. 7975, referred to by counsels, it has positively been shown the acts of the Federal Judges were absolutely not any form of excusable error, just outright arbitrary deliberate acts of inserting a prejudiced and perjured party in said case who had no rights to assert or any claim upon the proceeds of the insurance claim case No. 7975; and it was so declared by an Oregon state court decree. Said Federal Judges further denying appellant a jury trial sans the presence of appellant's divorced wife; who was subsequently "promoted" to position as the plaintiff in said case by said arbitrary and prejudiced court, which then relegated appellant to the demoted position as a defendant.

Now again, in this case No. 60-292 appellant has been denied a trial by the same court. When such acts are wilfully perpetrated and can positively be proven, which they were, the Government is responsible for the acts of said Federal Judges; particularly so when it was also shown and proved that said acts were designed to defraud appellant of his insurance claim proceeds. All of such proofs are contained right within the records and files of case No. 7975; along and together with a full accounting of said judge's angered tones and demonstrations, overt prejudicial acts, vociferations with physical gesticulations and with a contemptible smirk upon his countenance sentenced appellant to jail under the feigned mein of having been so sentenced for the erroneous charge, contempt of court; then exclaiming to the assembled court, "Herron got just what he was looking for."

(3) Relative to counsels for the Government contending that no jurisdiction is conferred upon a District Court; appellant answers: Article *III* of the Constitution conferred exercising powers upon Congress to establish the Federal District Courts and Legislative Courts; and appellant has answered in detail in the preceding No. (2) Question.

Appellant's only question presented in this case is: May he have the lower court's order emended which denied his State and Federal constitutional rights to a jury trial, wherein he could present his grievances; thus restoring his rights and privileges thereby having his day in court?

STATEMENT

Appellant in answering counsels, alleged facts, under the caption Statement, cites to-wit: Counsels have purposely omitted the real truth and facts concerning the reason why appellant courteously objected to taking the witness stand. Judge East became visibly bitter and extremely vengeful toward appellant deliberately removing several of appellant's witnesses while he was examining them, finally removing appellant's last witness, Judge East thenceforth arbitrarily vociferated a command for appellant to take the witness stand, "for the defense," without giving appellant his constitutional right and privilege to finish presenting his case and taking the witness stand in his own behalf.

Counsels for the Government omitted the actual full

truth by not stating the reason why the Court of Appeals denied appellant's writs of prohibition and mandamus; it being by reason said Court was without proper jurisdiction in the matters involved; which appellant was well advised in before he filed said writs, but had a specific purpose for so doing, of which counsels for the Government know nothing of.

Counsels for the Government further "coyered" the real full truth by merely stating appellant's writ of certiorari was denied; the full and actual truth being that thereafter, another Federal Judge of the Idaho District took over and presided at all hearings in case No. 7975 from thenceforth; and that also another Federal Judge of the same district presided entirely in this case No. 60-292.

Appellant finds it unncessary, too ridiculous, to answer counsels repeated statements relative to appellant's action being one subjected to the restrictions of the Tucker or Tort Acts. Appellant has amply covered the rebuttal to counsel's designed diversion. Right from the onset appellant made it clear his action was not one of Tort but deliberate violations of Constitutional Law committed by the Federal Court itself.

ARGUMENT

Appellant's request that he be allowed his day in Court to present his grievances before his peersmen should be granted, particularly so, when direct violations of constitutional law have been committed by

Federal Judges themselves. The vengeful wilful act of arbitrary arrest was entirely unwarranted: the court had its discretionary powers to invoke, declaring a mistrial, had there been any actual reason for so doing.

CONCLUSION

For the foregoing reasons, and the following, appellant respectfully presents that this appeal should be sustained.

By reasons of, to-wit: violations of constitutional law; admitting a third party to file a knowingly false affidavit in a Federal District Court asserting a non-existing insurance claim thereby collecting $750.00 from same; violation of appellant's state rights; violation of Oregon state court's decrees and orders; the congressional investigation records showing there was very pertinent reasons for, withholding for some time the appointment of certain judge and/or judges herein mentioned due to their physical and mental unfitness; that all such foregoing facts along with innumerable others were known to all the said Judges, the office of the United States Attorney, C. E. Luckey in Portland, Oregon; and the United States Department of Justice; yet nothing has been done to remedy these revolting conditions, in many respects they have aided, covered and shielded one another; upon the appellant seeking to arrange an appearance before the Federal grand jury he was told by C. E. Luckey's office to forthwith leave his office or he would be ordered arrested, *again*.

Dated this 10th day of May, 1961, at Portland, Oregon.

W. B. HERRON /s/
Appellant in propria persona.

CERTIFICATE OF SERVICE

STATE OF OREGON)
) ss. AFFIDAVIT
COUNTY OF MULTNOMAH)

I, W. B. HERRON being first duly sworn, depose and say, that I am the appellant herein acting as my own attorney appearing in propria persona, do hereby Certify: that in compliance with Rule 33 of Revised Rules of the Supreme Court Of The United States, I have forwarded via Certified Air Mail with return receipt requested, Service of five copies of the foregoing Brief Opposing, Motion to Dismiss, to Archibald Cox, Solicitor General of the United States Department Of Justice at Washington 25, D. C. That they were placed in a sealed package properly addressed and deposited for air mail at the main branch Portland, Oregon Post Office at Broadway and S. W. Glisan Street on this date.

That inasmuch I am not represented by counsel a member of the bar of the Supreme Court Of The United States, I therefore will furnish proof of such service having been made by forwarding to the Clerk of the Supreme Court of the United States, the Certified Mail Receipt together with its Return Receipt Card immediately upon receipt of same from the recipient.

Dated this 10th day of May, 1961 at Portland, Oregon.

W. B. HERRON
Appellant in propria persona.

W. B. Herron
c/o Western Oil Co.
10443-N. E. Klickitat
Portland 20, Oregon
AL-4-2867

Subscribed and sworn to before me this 10th day of May 1961 at Portland, Multnomah County Oregon.

VIOLETTE M. COURTRIGHT
Notary Public For Oregon.
My Commission Expires Feb. 5, 1962